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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,824	12/27/2003	Leslie N. Gilbertson	0103-0047 (ZM0583)	7187

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT PAPER NUMBER

3738

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,824

Applicant(s)

GILBERTSON, LESLIE N.

Examiner

Bruce E Snow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, "offset axially" is not understood. Does axial refer to the longitudinal direction or circumferentially, or radially? Does offset axially refer to a distance between an axis parallel and the longitudinal axis? Similar for claims 2, 6, 7, 10, 14, 15. Note applicant uses the language "longitudinally" in claim 3.

Claims 2-3, is "a portion" said "first portion"?

Claim 10, "aspect" is ambiguous. Please define.

Claim 14, the wall thickness at element 26 (Figure 2) on "the compression" side is clearly less than anywhere on the "tensile side".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-10, 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks (5,035,717).

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Brooks teaches a modular joint implant including a male/female junction, the implant comprising:

a first component 24 including a bore 26 having a bore opening and an interior surface forming a female side of the male/female junction, the bore having longitudinal junction axis;

a second component 12 including a projection having an exterior surface forming a male side of the male/female junction, the projection being engageable with the bore in male/female seating arrangement along the junction axis, the bore and projection being in contact over an area extending longitudinally from the bore opening, a first portion (top right of element 24) of the contact area adjacent to the bore opening being offset axially relative to a second portion (top left of element 24 (this interpretation can be reversed if necessary)) of the contact area adjacent to the bore opening.

Note the wall thickness of the first component tapers.

Regarding claim 9, element 34 is offset radially.

Claim 14, the left side is the tension side which is identical to applicant's only the drawing is reversed.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sekel (5,580,352).

Referring to at least figure 5, Sekel teaches a modular joint implant including a male/female junction, the implant comprising:

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a first component 14 including a bore 6 having a bore opening and an interior surface forming a female side of the male/female junction, the bore having longitudinal junction axis;

a second component 8 including a projection having an exterior surface forming a male side of the male/female junction, the projection being engageable with the bore in male/female seating arrangement along the junction axis, the bore and projection being in contact over an area extending longitudinally from the bore opening, a first portion (top right of element 14) of the contact area adjacent to the bore opening being offset axially relative to a second portion (top left of element 14 (this interpretation can be reversed if necessary)) of the contact area adjacent to the bore opening.

Note the wall thickness of the first component tapers.

is offset radially.

Claim 14, the left side is the tension side which is identical to applicant's only the drawing is reversed.

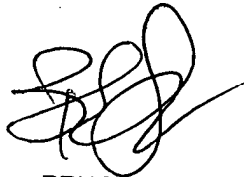
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW
PRIMARY EXAMINER